

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN BLAGEC,

Case No. 2:04-CV-296

Plaintiff,

v.

Hon. Richard Alan Enslen

MINER'S INCORPORATED,
et al.,

ORDER

Defendants.

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Plaintiff Steven Blagec has objected to Defendants' Bill of Costs. The Objection is facile and does not require legal argument. *See* W.D. Mich. L.Civ.R. 54.1 & 7.3(d).

Defendants have submitted a bill of costs pursuant to 28 U.S.C. § 1920 in the amount of \$1,001.59. Defendants' attorney has certified that the costs billed were necessarily incurred and the services were actually and necessarily performed. (Dkt. No. 47.) The bill consists of \$150.00 for court fees and \$851.59 for transcription fees. Plaintiff has objected to the transcription fees on the ground that deposition testimony was not necessary to resolve the dispute because the undisputed contract language controlled the dispute.

A party objecting to the taxation of costs as unreasonable has the burden of persuading the court of such. *BDT Products, Inc. v. Lexmark Intern., Inc.*, 405 F.3d 415, 419-20 (2005). "Ordinarily, the costs of taking and transcribing depositions reasonably necessary for the litigation are allowed to the prevailing party. Necessity is determined as of the time of taking, and the fact that a deposition is not actually used at trial is not controlling." *Sales v. Marshall*, 873 F.2d 115, 120 (6th Cir. 1989).

In this case, deposition testimony was used to support the summary judgment motion which resolved the case. While it might have been possible to do so without the deposition testimony, such testimony was still necessary for the defense of the case because a prudent defense attorney would have insisted upon the taking of the deposition to discover pertinent testimony and use the testimony for cross-examination at trial. Accordingly, the Court finds that Plaintiff has not shown that the costs were improperly taxed.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Objection (Dkt. No. 49) is **DENIED** and costs are taxed in favor of Defendants and against Plaintiff in the amount of \$1,001.59.

DATED in Kalamazoo, MI:
January 26, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE